

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7027 of 1997

with

SPECIAL CIVIL APPLICATION No 7037 of 1997

with

SPECIAL CIVIL APPLICATION No 3647 of 1997

with

SPECIAL CIVIL APPLICATION No 7431 of 1997

with

CIVIL APPLICATION No 3557 of 1998

with

CIVIL APPLICATION No 7863 of 1998

with

CIVIL APPLICATION No 10382 of 1998

with

CIVIL APPLICATION No 11096 of 1997

with

CIVIL APPLICATION No 11403 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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SURAT (HAZIRA)KAMDAR KARMCHARIUNION

Versus

STATE OF GUJARAT

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Appearance:

MR PC MASTER for Petitioners (in all matters)  
MR SP HASURKAR with MS SB TRIVEDI for Resp. No.1 & 2  
(in all matters)  
MR JAYANT PATEL for Respondent No. 3 (in all  
matters)  
MR KS NANAVATI with MR.CHUDGAR for Respondent No.4  
(in all matters)  
MR RD DAVE with MR P UPADHYAY for Respondents  
Nos.5, 6 and 7 in Spl. C.A. No.7027 of 1997.  
MR KM PATEL for Respondent No.5 in Spl. C.A. No.3647  
of 1997.  
MR HC RAWAL for Respondent No.6 in Spl.C.A.No.3647  
of 1997.

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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 09/09/98

ORAL JUDGEMENT

RULE. Service of Rule is waived for the  
Respondents in all the matters.

2. Special Civil Applications Nos.7027 of 1997, 7037  
of 1997 and 7431 of 1997 are filed by the Surat (Hazira)  
Kamdar Karmachari Union. Special Civil Application  
No.3647 of 1997 is filed by the Surat Labour Union. The  
State of Gujarat and the Commissioner of Labour are  
Respondents Nos.1 & 2 in all these petitions. Essar  
Steel Ltd. is one of the other respondents in these  
petitions. Apart from these three principal respondents,  
certain other Governments officers are also joined as  
respondents in these petitions and some of the companies  
/ firms which are engaged as labour contractors by the  
aforesaid Essar Steel Ltd. are also joined as  
respondents in these petitions. Prayers in all these  
petitions principally seek abolition of contract labour  
system under Essar Steel Ltd. and for that they seek a  
direction against the State of Gujarat for a reference to  
the State Advisory Contract Labour Board constituted in  
that behalf under the provisions of Contract Labour  
(Regulation & Abolition) Act, 1970. The total number of  
employees covered under these petitions is approximately  
as follows:

Spl. C.A. No. of workmen

SCA 7027/97 670

SCA 7037/97 140

SCA 3647/97 450

SCA 7431/97 40

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3. Mr.P.C.Master appears for the petitioners in all these petitions. Mr.Hasurkar along with Ms. S.B.Trivedi appears for the State of Gujarat and the Commissioner of Labour. Mr.K.S.Nanavati with Mr.Chudgar appear for Essar Steel Ltd. - the principal employer. Mr.R.D.Dave with Mr.Upadhyay appear for Respondents Nos.5, 6 & 7 in Special Civil Application No.7027 of 1997. They are the labour contractors concerned in that matter. Mr.K.M.Patel appears for Respondent No.5 in Special Civil Application No.3647 of 1997. Respondent No.5 is the concerned contractor in that matter. In Special Civil Application No.7431 of 1997, Mr.H.C.Rawal appears for Respondent No.6 who is the contractor concerned in that matter.

4. When these matters first came to me, it was apprehended that, because of the efforts taken by the petitioner - union to organise the employees, the workmen concerned would be terminated from their services. Hence, while issuing notices to the respondents, interim protection was granted to the workmen concerned whose lists are annexed to all these petitions and thereby Essar Steel Ltd., who is the principal employer, and the contractors were restrained from terminating the services of the employees concerned until further orders. Such an order was passed in Special Civil Application No.7027 of 1997 on 25.9.1997; in Special Civil Application No.7037 of 1997 on 25.9.1997; in Special Civil Application No.3647 of 1997 on 21.10.1997 and in Special Civil Application No.7431 of 1997 on 9.10.1997. Subsequently, replies were filed by the principal employer as well as by the contractors concerned.

5. During the period when the aforesaid matters were pending, the State of Gujarat made a reference to the above-referred Board on 11.2.1998 seeking its advise with respect to 38 trades as to whether the contract labour system employed by the principal employer in these trades deserves to be abolished. In view of this reference, the substantial purpose of filing of the petition had come to be served and the report of the Advisory Board is awaited. The Hon.'ble Supreme Court in the case of AIR INDIA STATUTORY CORPORATION v. UNITED LABOUR UNION reported in AIR 1997 Supreme Court 645 in terms held that, in the event the contract system is abolished, the employees concerned have a right of being absorbed. Thus, in paragraph 58 of the said judgment, the Hon.'ble Supreme Court has observed:

"Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of employer and employee is created between the principal employer and workmen."

Thus, the end-result of the efforts taken by the petitioners, if they succeed in the reference, is also known. The question, therefore, which now arises is only with respect to the interregnum, namely, whether the employees concerned can be terminated during the pendency of the reference which has been made by the State Government and that is the protection which is sought by the petitioners.

6. As against this submission, Mr.Nanavati learned Counsel for the principal employer submitted that, during this interregnum, normally, the principal employer would retain all the employees and contractors though there could be some cases for discontinuing the contract of some of the contractors or discontinuing the employees under him due to the complaints by the principal employer vis-a-vis some of the employees working with the contractors. It was submitted by Mr.Dave that there is some dispute between his clients and the principal employer with respect to the terms of the contract and, if his clients are not satisfied, they would like to terminate their relationship with the principal employer and that they should not be restrained from doing so. Mr.Patel submitted that some of the employees could be useful in some other contracts and the contractor should be permitted to transfer their employees in such an eventuality. He also submitted that the right of the contractors to take disciplinary actions against their employees may also have to be protected.

7. As stated above, the orders protecting the workmen concerned have been passed by me way back in September and October 1997. The Union has not made any grievance that there is any breach of that order. Not only that, but Mr.Master has pointed out that in the affidavit-in-reply filed by the principal employer Essar Steel Ltd. in Special Civil Application No.7037 of 1997, it is stated in paragraph 33 as follows:

"At the cost of repetition I state that it is true that with the passage of time and purely with a view to safeguard the interests of

workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact, such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer."

In the said affidavit-in-reply in para 33 it has been earlier stated as follows:

"However, respondent No.4 as a principal employer would certainly insist that the contractor or the new contractor retains the old employees."

Mr.Master has also drawn my attention in this behalf to the judgment of the Hon.'ble Supreme Court rendered in the case of CANTEEN MAZDOOR SABHA v. DELHI ADMINISTRATION reported in 1986 (1) SCALE 181 wherein in the event of an erstwhile contractor going out and where the employees under that contractor were likely to lose their jobs, the Hon.'ble Supreme Court directed that the principal employer while negotiating or giving a fresh contract for running the canteen, shall incorporate a term in the contract that the contractor shall employ the employees concerned in the canteen and continue to employ them during the contract period. In that view of the matter, Mr.Master submits that the principal employer having continued and having offered to continue the same employees (for which there is a precedent in the aforesaid order of the Supreme Court), there is no reason to imagine difficulties. Besides, the interim orders passed by this court have been operating for about an year or so by now.

8. Mr.Nanavati made a number of other submissions, including that such an interim protection is not called for. He referred to a judgment of a Division Bench of the Andhra Pradesh High Court reported in 1989 (58) F.L.R 685 in the case of A.P.DAIRY DEVELOPMENT COOP. FEDERATION v. K. RAMULU wherein it has been held that the writ jurisdiction cannot be used to direct employers to impose conditions on successive contractors to engage the employees. As stated above we have seen a contrary precedent of the Supreme Court. No doubt, that was a case concerning contract employees in Delhi High Court canteen but, at the same time, in the light of the

judgment of the Supreme Court in the case of AIR INDIA STATUTORY CORPORATION (*supra*), it is necessary to extend the principle in that judgment to this intervening period in the interest of justice. Mr.Nanavati also referred to and relied upon a judgment of the Supreme Court in the case of STATE OF ORISSA v. MADAN GOPAL RUNGTA reported in AIR 1952 Supreme Court 12 wherein it has been held that Article 226 of the Constitution of India cannot be used for the purpose of giving interim relief as the only and final relief. In the present case, the principal relief sought is to direct the State Government to refer the dispute for abolition of contract labour system. The principal relief here is not to seek any injunction or any interim relief during disposal of the matter. In fact, the principal relief is abolition of contract labour system. Therefore, it cannot be said that the principal relief in this matter is only seeking this interim relief. It is, however, material to note that the aforesaid Supreme Court judgment also states: "An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in suit or proceeding." In my view, the interim relief in the nature in which it is granted herein is just and necessary and will have to continue. The observations of the Hon.'ble Supreme Court in para 59 of the AIR INDIA case (*supra*) are very apt in this behalf:

"The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel in the *qui vive* is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10 (1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions."

The submission of Mr.Master with respect to continuation of the interim protection will have to be accepted. Non-acceptance of it will render the employees without any protection and that would be unjust.

9. At the same time, some arrangements will have to be made during the interregnum, particularly for the situations where a misconduct takes place or where there is an absolute necessity to transfer any employee. In

the event of a misconduct being committed by any employee, as of now, the principal control is that of the contractor and therefore he cannot be prevented from taking any action against the employee concerned. That will, of course, be subject to whatever orders are passed thereafter by the appropriate authorities in case any industrial dispute is raised and, in the event the action of the employer being vitiated, the employee will be entitled to come back in the position wherein he wanted to be under the principal employer if the contract system is abolished in the meanwhile. Similarly, in the event of absolute necessity to transfer any employee, the contractor cannot be prevented from transferring his employee but, during this interregnum, when the employee is seeking a permanent position under the principal employer, his interests also will have to be protected. It is, therefore, directed that, in such an eventuality, the contractor will incorporate in the order of transfer that the employee will have a lien under the principal employer and in the event the reference is decided finally in favour of the employees, he will have the right of absorption. A written order of transfer containing such a protection will be given to the employee concerned and a copy thereof will be given to the petitioner union, and the principal employer and will be filed before the Advisory Board as well as in this court.

10. As stated above, in the event any contractor is discontinued, the employees under that contract will be continued under the principal employer though under another contractor. There is, however, one more eventuality. In the event the entire activity is not required by the principal employer, then the employees will continue to have a lien on their position under the principal employer. In Civil Application No.11403 of 1997 in Special Civil Application No.7431 of 1997, some such workmen were discontinued and the amounts due to them have been deposited in this court. They will have a liberty to withdraw those amounts. Mr.Master states that the work which has been discontinued has been given to another contractor who has engaged other employees. It will be open to the applicant - union or the employees to make necessary application and to place it on record before the Board and, in the event the Board is satisfied with respect to that finally, in its report the Board will make necessary recommendations.

11. Then comes the question as to what directions would be appropriate. Mr.Master drew my attention to the

judgment of a single Judge of this court in the case of BIJLI MAZDOOR PANCHAYAT v. STATE OF GUJARAT reported in 1996 (2) Gujarat Law Reporter 228 wherein similar interim direction was granted and a direction to dispose of the proceeding before the Advisory Board was also issued directing the Board to dispose of the reference within eight weeks. Mr.Master informs that the reference was however disposed of after about six months. In that view of the matter, on a query to Mr.Hasurkar, he has informed that there are in all 38 trades which are under consideration for abolition in these matters and there are 46 contractors/ sub-contractors. He has also pointed out that, after receiving the reference, the procedure followed by the Board is in all in nine stages. They are as follows:

- "1. Notices served to submit the information in respect of contractors, contractors' workers, No.of workers employed by the Company, wages paid etc.
2. Statement of claims are to be submitted to the Board by the Union or workers.
3. The management files reply to the statements of claim.
4. Both the parties are heard at length.
5. Committee formed, to collect data and information with regard to the contractors' labourers.
6. In case if there is no necessity of Committee to visit, the report is prepared from the submissions of facts and arguments.
7. Proforma opinions distributed to the members for filling, whether to be abolished (YES), or not to be abolished (NO).
8. Report prepared depending upon above facts and opinions of members and recommendations to be made to Government.
9. Report is to be forwarded to Government, thereafter."
12. A notice has already been issued to the principal

employer to inform with respect to the work-force under various contractors. That notice had been served on the principal employer way back in March 1998 and the employer has not given any particulars in the meanwhile. The employer has sought three months time and the same is granted and yet those particulars are not given though more than three months are over. In the circumstances, this is not a situation for which employees alone are responsible. They are interested in early decision and for that matter the principal employer as also the contractors are also interested in early disposal. In the circumstances, looking to the facts of this case, it would be proper if the Board is directed to dispose of the reference within six months from the date of receipt of the writ. The Advisory Board will file a statement in this court at the completion of each stage out of the nine stages mentioned in the proceeding. Mr. Master states that the Union would like to represent the employees before the Board. That will be so permitted. Mr. Hasurkar states that, when a notice is issued to them, they may also file reply. He further states that after receipt of the final report, normally the appropriate order of abolition is issued within one month and so it will be in the present case. The interim protection against termination and transfer granted herein will therefore continue with the modifications mentioned in para 9 & 10 above till completion of the proceeding before the Advisory Board and for a period of two months thereafter. The principal employer, the contractor as well as the Union of employees will cooperate for early disposal of the proceeding and will not unnecessarily adjourn the matter. All the aforesaid petitions are accordingly disposed of vis-a-vis the prayer with respect to abolition of contract labour system with directions as above. With respect to other submissions and prayers, the petitioners may avail of other remedies or may file separate petitions. Their right is reserved.

13. As far as Civil Application No. 7863 of 1998 is concerned, the same is against transfer of five workmen. By the order dated 31.8.1998, my brother Pandit J. had directed the respondent to justify the transfers. A reply is filed but without any justifying material. These transfers, therefore, cannot be permitted as of now. This Civil Application is accordingly disposed of. The employees concerned will continue to work under the principal employer unless there is an absolute necessity for transfer in which case the conditions mentioned earlier will be required to be followed.

14. Rule is made absolute in each petition to the

aforesaid extent. All the civil applications made therein are disposed of accordingly. There will be no order as to costs.

(KMG Thilake)

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